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January 20, 2008

BY E-FILE

The Honorable Joseph J. Farnan, Jr.
United States District Court, District of Delaware
844 North King Street
Wilmington, DE 19801

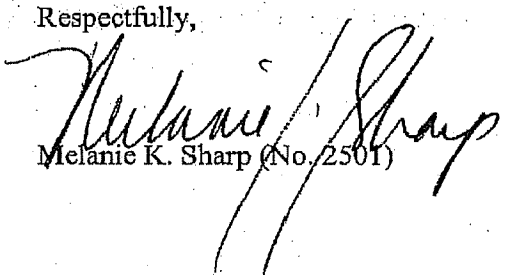
Re: NICE Systems, Inc. and NICE Systems, Ltd. v. Witness Systems, Inc.
C.A. No. 06-311 (JJF) - Jury Instructions

Dear Judge Farnan:

I write on behalf of my clients, Plaintiffs NICE Systems, Inc. and NICE Systems, Ltd. (collectively, "NICE") to inform Your Honor that NICE has withdrawn one of its proposed jury instructions submitted for consideration today. NICE agrees to accept Federal Circuit Bar Association Model Jury Instructions 3.2 (2007) (Inducing Patent Infringement), a copy of which is attached. Witness Systems' proposed instruction deviates from the Federal Circuit Bar Association Model Jury Instruction 3.2, and Witness declines to accept the form instruction.

While I noted in our submission that counsel are available if the Court has any questions, I failed to note that the most reliable number to reach us is my office number ((302) 571-6681) and my fax ((302) 576-3333) rather than any alternate location for the weekend.

Respectfully,


Melanie K. Sharp (No. 2501)

YOUNG CONAWAY STARGATT & TAYLOR, LLP

The Honorable Joseph J. Farnan, Jr.

January 20, 2008

Page 2

MKS

cc: Clerk of the Court (by Hand Delivery)
William J. Marsden Jr., Esquire (by Hand Delivery)

B.3. Infringement**3.2 ACTIVE INDUCEMENT**

[Patent holder] alleges that [alleged infringer] is liable for infringement by actively inducing [someone else][some other company] to directly infringe the [] patent. As with direct infringement, you must determine whether there has been active inducement on a claim-by-claim basis.

A [person] is liable for active inducement of a claim only if:

- (1) the [person] takes action during the time the patent is in force which encourages acts by [someone else]; and
- (2) the encouraged acts constitute direct infringement [or 271(f) infringement] of that claim; and
- (3) the [person] is aware of the patent, and knows or should have known that the encouraged acts constitute infringement of that patent]; and
- (4) the [person] has an intent to cause the encouraged acts; and
- (5) the encouraged acts are actually carried out by the [someone else].

In order to prove active inducement, [patent holder] must prove that each of the above requirements are met. Further, proof must of each element be by a preponderance of the evidence, *i.e.*, that it is more likely than not that each of the above requirements has been met.

In order to establish active inducement of infringement, it is not sufficient that the [person][company] that is allegedly induced to infringe itself directly infringes the claim. Nor is it sufficient that [accused infringer] was aware of the act(s) that allegedly constitute the direct infringement. Rather, you must find specifically that [accused infringer] specifically intended to infringe the [] patent, in order to find inducement of infringement. If you do not find that [accused infringer] specifically intended to infringe, then you must find that [accused infringer] has not actively induced the alleged infringement.

Authorities

35 U.S.C. § 271(b); *Ferguson Beauregard/Logic Controls, Division of Dover Resources, Inc. v. Mega Systems, LLC*, 350 F.3d 1327, 1342 (Fed. Cir. 2003); *Warner-Lambert Co. v. Apotex Corp.*, 316 F.3d 1348, 1363-66 (Fed. Cir. 2003); *Insituform Techs., Inc. v. CAT Constructing, Inc.*, 385 F.3d 1360, 1377-78 (Fed. Cir. 2004); *Metro-Goldwyn-Mayer Studios Inc. v. Grokster*, No. 04-480 (June 27, 2005); *DSU Medical Corp. v. JMS Co., Ltd.*, Nos. 04-1620, 05-1048, 05-1052 (December 13, 2006) (Fed. Cir.).